

STATE OF NORTH DAKOTA



***Information Technology Department  
Telecommunications Division  
600 E Boulevard Ave, Dept 112  
Bismarck, ND 58505-0100***



Request For Proposal (RFP)

RFP Title: *STAGEnet Equipment Procurement*

RFP Number: 112-0503

Date of Issue: ***July 8, 2005***

Purpose of RFP: To re-bid current STAGEnet equipment procurement contract. One of three RFP's, this RFP focuses on the procurement of data and video equipment for STAGEnet. The other RFP's to be released are for transport services and wireless voice and data.

Offerors are not required to return this form.

**Procurement Officer: *Brandy Peterson***

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## **SECTION ONE INTRODUCTION AND INSTRUCTIONS**

### **1.01**

#### **Purpose of the RFP**

This Request for Proposal (RFP) is issued by the Information Technology Department (ITD) in coordination with the Office of Management and Budget of the State of North Dakota (hereinafter referred to as the State). The State currently supports a statewide Wide Area Network (WAN) called STAGEnet (Statewide Technology Access for Government and Education Network). The purpose of this RFP is to elicit proposals for Customer Premises Equipment (CPE), including network, & video equipment, Cisco SMARTNet, and optical backbone equipment. The State is increasingly dependent on STAGEnet to conduct internal business and to meet educational requirements. The State is seeking significant discounts off manufacturer list price for hardware, software, and related services. Because of the diversity of equipment being requested and the service/support options specified in this RFP, the State intends to issue multiple contracts. This RFP includes purchasing for State government and education.

#### **Cooperative Purchasing**

This Request for Proposal will result in the award of a State Term Contract that will be made available to entities authorized to participate in cooperative purchasing with the State under North Dakota Century Code 54-44.4-13, including institutions under the jurisdiction of the State Board of Higher Education, K-12 schools, and local government entities.

Universities and Colleges, K-12, and local government may purchase directly off of the contract and will not go through the State to do so. If educational discounts apply they should be identified and noted as such.

It is expected that the purchasing departments of Universities and Colleges shall allow purchases from the chosen or preferred vendor without requiring bids from other vendors. The chosen vendor will be the preferred vendor, not the sole vendor.

The Universities and Colleges are members of various consortiums and may choose to take advantage of lower costs when purchasing through another vendor as a member of the consortium. The Universities and Colleges would purchase through the preferred vendor if it chooses to match the price available through the various consortiums.

K-12 and local government can elect to purchase inside or outside of any negotiated contract that is a result of this RFP at their sole discretion.

### **1.02**

#### **Contact Person, Telephone, Fax, E-mail**

The procurement officer is the point of contact for this RFP. All vendor communications regarding this RFP must be directed to the procurement officer. Unauthorized contact regarding the RFP with other state employees of the State may result in the vendor being disqualified, and the vendor may also be suspended or disbarred from the state bidders list.

PROCUREMENT OFFICER: Brandy Peterson  
PHONE: 701-328-1002  
FAX: 701-328-3000  
TTY Users call: 1-800-366-6888  
E-MAIL: blpeterson@state.nd.us

### **1.03**

#### **RFP Schedule of Events**

This schedule of events represents the State's best estimate of the schedule that will be followed for this RFP. If a component of this schedule, such as the deadline for receipt of proposals, is delayed, the rest of the schedule will be shifted by the same number of days.

The approximate RFP schedule is as follows:

- RFP Issued: **8 July 2005**
- Letters of Interest are due **15 July 2005**
- Deadline for receipt of questions and objections related to the RFP: **20 July 2005**
- Deadline for the answers to questions and objections related to the RFP: **25 July 2005**
- Proposal Opening: **19 August 2005**
- Proposal Evaluation Committee evaluation completed: **1 September 2005**
- State issues Notice of Intent to Award a Contract: **2 September 2005**
- Contract signed: **21 October 2005**
- Contract start date: **01 January 2006**

### **1.04**

#### **Return Mailing Address and Deadline for Receipt of Proposals**

Offerors must submit one (1) original (marked 'Original') and ten (10) copies of the proposal in a sealed envelope or package.

Offerors must submit an electronic copy of their proposal on a removable media such as CD-ROM.

Envelopes or packages containing proposals must be clearly addressed as described below to ensure proper delivery and to avoid being opened by the State before the deadline for receipt. Envelopes or packages must be addressed as follows:

**North Dakota Information Technology Department**  
**Telecommunications Division**  
**Attn: Dirk Huggett**  
Request for Proposal (RFP): **STAGEnet Equipment Procurement**

RFP Number: **112-0503**  
**600 East Boulevard Avenue**  
**Bismarck, ND 58505-0100**

Proposals must be received by the State at the location specified no later than **2:00 P.M., CENTRAL**, Time on **19 August 2005**. Proposals will not be publicly read at the opening.

Proposals may not be delivered orally, by facsimile transmission, by other telecommunication or electronic means. Offerors may fax or electronically transmit signed proposals to a third party who must deliver the proposal to the location indicated above by the date and time designated as the deadline for receipt of proposals.

Offerors assume the risk of the method of dispatch chosen. The State of North Dakota ("State") assumes no responsibility for delays caused by any delivery service. Postmarking by the due date will not substitute for actual proposal receipt by the State. An Offeror's failure to submit its proposal prior to the deadline will cause the proposal to be rejected. Late proposals or amendments will not be opened or accepted for evaluation.

**1.05**

**Assistance to Offerors with a Disability**

Offerors with a disability that need an accommodation should contact the procurement officer prior to the deadline for receipt of proposals so that reasonable accommodation can be made.

**1.06**

**Deadline for Receipt of Questions and Objections**

Offerors must carefully review this solicitation, the contract, and all attachments for defects, questionable, or objectionable material. All questions must be submitted in writing to the email address of the procurement officer, and cite the subject RFP number. The procurement officer must receive these written requests by the deadline specified in the RFP Schedule of Events to allow issuance of any necessary amendments.

This will also help prevent the opening of a defective solicitation and exposure of the Offerors' proposals upon which an award could not be made. Protests based on the content of the solicitation will be disallowed if these faults have not been brought to the attention of the procurement officer, in writing, before the time indicated in the Schedule of Events.

If the question may be answered by directing the questioner to a specific section of the RFP, then the procurement officer may answer the question over the telephone. Other questions may be more complex and may require a written amendment to the RFP. The procurement officer will make this determination. Oral communications is considered unofficial and non-binding on the State. The Offeror must confirm telephone conversations in writing.

**1.07**

**Approved Vendor Registration Requirements**

**VENDORS MUST BE APPROVED BEFORE CONTRACT AWARD**

Proposals will be accepted from vendors that are not currently approved vendors on the State's Offerors list; however, the successful Offeror must register and become approved within **45 CALENDAR DAYS** from the date of the Notice of Intent to Award. If an Offeror fails to become approved by the time specified by the Procurement Officer, its proposal will be determined to be

non-responsive, and its proposal will be rejected.

To become an approved vendor, Offerors must: 1) be registered with the North Dakota Secretary of State (fees apply), and 2) submit a completed Offerors List Application to the North Dakota Vendor Registry Office. Prospective Offerors may access the Procurement Vendor Database on-line to verify whether their firm is currently on the Offerors list. The Offerors list that will be used for this solicitation is commodity codes **206-64 and 804-56**.

The Procurement Vendor Database, registration instructions and forms are available on-line at: <http://www.state.nd.us/csd/spo/vendor-resources.htm>. Contact the Vendor Registry Office at 701-328-2773 or [infospo@state.nd.us](mailto:infospo@state.nd.us) for assistance.

#### **1.08 Offerors Conference**

There will be no pre-proposal conference for this RFP. Offerors are advised to carefully review the RFP and all attachments and submit all questions to the procurement officer by the deadline indicated for submission of questions in the schedule of events.

#### **1.09 Amendments to the RFP**

If an amendment to this RFP is issued, it will be provided to all Offerors that submitted a Letter of Interest (see Section 1.12).

#### **1.10 News Releases**

News releases related to this RFP will not be made without prior approval of the procurement officer or project manager designated by the State.

#### **1.11 Notice Provided**

Notice of this solicitation has been provided in accordance with N.D.C.C. 54-44.4-09.

The Request for Proposal and any amendments to the RFP will be posted on the following website: <http://www.STAGEnet.nd.gov/current-projects/infrastructure/>.

#### **1.12 Letter of Interest**

Vendors interested in receiving any notices related to this RFP are to contact the procurement officer with the name of their firm, contact person, mailing address, telephone number, fax number, and e-mail address. The sole purpose of the letter of interest is to provide the State with a contact person to receive any notices related to the RFP. Submission of a letter of interest does not constitute a requirement for submitting a proposal to this RFP. The State must receive the letters of interest by July 15, 2005.



## **SECTION TWO BACKGROUND INFORMATION**

### **2.01**

#### **Background Information and Technical Overview**

Originally deployed over an Asynchronous Transfer Mode (ATM) infrastructure, STAGEnet has evolved into a hybrid network in order to meet increased demand. The infrastructure now includes the use of optical fiber, Internet Service Provider (ISP) broadband services, and wireless/satellite connectivity.

The State envisions STAGEnet 2006 as the next generation network that will provide a cost-effective and reliable infrastructure to both meet and surpass current business objectives. The vision for STAGEnet includes providing the scale and flexibility to support the convergence of voice, video and data technologies, as key components in optimizing statewide services. K-12 and Higher education provide local area network services internally. STAGEnet is managed and operated by the State and provides statewide network access and connectivity for:

- State government
- State, local, county, and city offices
- K-12 schools
- Universities and Colleges
- Public libraries

The current infrastructure, operational for over 5 years, is now experiencing significant demands for additional bandwidth, lower network latency, and higher quality of service resulting from introduction of the following requirements:

- Document imaging
- Geographical Information Systems (GIS)
- Increased research at State universities and colleges
- Increased use of video throughout all State educational institutions as well as a number of government functions
- Online access to government and education services throughout the State
- Convergence of Voice, Video, and Data

STAGEnet currently supports the following statewide applications along with others not listed:

- ConnectND - PeopleSoft's enterprise resource planning software system is being utilized as a joint project between the State and the North Dakota University system.
- PowerSchool - provides remote access for parents and students of K12 to view current grades, assignment scores, and attendance information.

- GIS Hub - Geographic Information System that provides interactive maps and data and servers as a clearing house for information and ideas.
- CJS – is an enterprise architecture that puts in place a statewide framework of people, processes, data, standards, and technology focused on providing accurate and comprehensive data to the criminal justice community in the State of North Dakota.

## **2.02 Estimated Annual Equipment Expenditures**

The State's estimated total annual value of the equipment expenditures from this contract is expected to exceed \$1,000,000.

## **SECTION THREE SCOPE OF WORK**

### **3.01**

#### **Scope of Work**

The State is soliciting proposals for Customer Premises Equipment (CPE), including networking and video equipment that interfaces with the State's proposed STAGEnet 2006 internetworking infrastructure. A separate RFP has been issued for the STAGEnet 2006 #112-0502 which can be found at the STAGEnet website: <http://www.STAGEnet.nd.gov/current-projects/infrastructure/>. It is the intent of this RFP to address the State's need for equipment and services in the following classes:

Class I IP Network Infrastructure  
    LAN/WAN Hardware  
    On-Site Services (Time and Material)

Class II SMARTnet

Class III Optical Transport (Backbone)  
    Optical Transport Equipment  
    Optical Transport Software & Replacement Maintenance  
    Other Transport Equipment

Class IV Video Equipment  
    Codec Units and Hardware  
    On-Site Services (Time and Material)

Because of the diversity of equipment being requested and the service/support options specified in this RFP, the State intends to issue multiple contracts per class:

- Class I – single or multiple award
- Class II – single award
- Class III – single or multiple award
- Class IV – single or multiple award

Offerors will have the option to bid on individual classes and may submit proposals including equipment from more than one manufacturer or as a bundled offering. If a bundled approach is used then any discount should take the form of a percentage discount from the unbundled cost.

### **3.02**

#### **Definitions**

The following terms used herein shall have the following meanings:

- a) **"24x7x365"** shall mean 24 hours per day, 7 days per week, 365 days per year inclusive of all Holidays and weekends.
- b) **"8x5"** shall mean during normal business hours, 8:00am – 5:00pm, Mon – Fri, except holidays.
- c) **"Backbone"** shall mean the independent facilities being requested in this RFP for the sole purpose of transmitting information for the end-users of the STAGEnet infrastructure.

- d) **"Backbone node"** shall mean the physical site where Offeror wavelengths connect to State-owned equipment. This location can either be co-located at Offeror facilities or established meet point.
- e) **"Contract start date"** shall mean the date the contract is signed by both parties.
- f) **"Wavelength"** shall mean a 2.5 Gbps optical signal.
- g) **"Maintenance"** shall mean the hardware and or software support to restore service or perform upgrades.
- h) **"Network Access"** shall mean the end-point connectivity for STAGEnet remote sites connecting to the Backbone.
- i) **"Offeror"** shall mean any responding bidder to this RFP.
- j) **"STAGEnet"** shall mean the shared enterprise infrastructure called Statewide Technology Access for Government and Education Network.
- k) **"IP"** shall mean internet protocol.

### 3.03

#### Information Technology Solution

#### INTRODUCTION

The State expects to upgrade and/or replace various network components during the life of this contract and the list of major equipment currently in use is included as Attachment 4. The Offeror may bid on any class listed below.

If educational discounts apply they should be identified and noted as such.

During the life of this contract the awarded Offeror must provide updated price lists at the request of the State.

#### Class I - IP Network Infrastructure

Currently, STAGEnet hosts more than 500 locations around the State. Each location contains a variety of network equipment. These sites are primarily served with ATM service and Gigabit fiber connections. Other connectivity includes Frame Relay and broadband services such as Cable, DSL, wireless, and satellite connectivity. Most all of the network equipment which is installed and managed by the State is provided by Cisco Systems. In addition to routers and switches, the State also installs and maintains firewalls, intrusion detection systems, content filters, wireless access points, and VPN gateways. The State also provides local area network (LAN) services for State government which is also Cisco hardware. Both Higher Education and K12 provide support and design for their own internal (LAN) networks.

#### LAN/WAN Hardware

In response to "Class I" of this RFP, Offerors are required to provide a percentage discount off the complete product line of at least one or any combination of the following hardware manufactures list price:

- Cisco
- Nortel
- APC
- Linksys

Any hardware not included in any discount for a specified manufacture must be identified to the State with an explanation of its exclusion. Offerors are encouraged to include list pricing and discounts available for other manufactures, such as CheckPoint, Kentrox, and 3COM, to include, but not limited to:

- Firewalls
- Intrusion Detection Systems
- Content Filters
- Wireless Networking Hardware
- VPN Hardware & Software

### **On-Site Services (Optional)**

The State has needs on occasion to supplement its workforce in the installation or repair of LAN/WAN equipment throughout the State. Therefore, the State seeks offers to provide support services on a “time and material” basis. The State expects that the Offeror would provide on-site support for maintenance issues within the same day but no later than 8:00AM the next business day.

### **Class II – Cisco SMARTnet**

The State currently maintains its own select group of Cisco hardware as on-site spares. This inventory provides the State immediate advanced replacement for most Cisco components. All Cisco hardware which the State maintains as an advanced spare is also serviced by SMARTnet next-day service. Other critical hardware not maintained as an on-site spare is placed on SMARTnet 4 hour service. Most all other Cisco hardware is placed on standard SMARTnet next-day service (see Attachment 5 for details).

The State desires an enhanced solution to manage the purchases and renewals of Cisco’s SMARTnet service for the States Cisco infrastructure. The State seeks a plan that once equipment is covered it is always covered until the State makes notification to discontinue coverage or the service is no longer available from Cisco.

The State expects the full benefits from SMARTnet service as though the State was making the purchase directly. Therefore, it must include direct access and benefits to all Cisco provided equipment replacement, support tools, and staff (Cisco TAC) available under each Cisco SMARTnet service purchased.

In addition, the Offeror must provide the following in responding to Class II of this RFP:

- Administration and Tracking of each SMARTnet item purchased
- Automatic renewal of each SMARTnet purchase unless otherwise directed
- Options to permit either annual or monthly billing
- Itemized billing and payment processes to permit the State to renew by invoice alone
- Ability to interface with the State’s accounting department as opposed to the State’s technical staff

### **Class III – Optical Transport (Backbone)**

The State plans to transform the current network into next generation capabilities through a resilient packet ring technology, and at the same time expand the backbone. The backbone is proposed to be expanded from the 2 existing network nodes to 8 nodes as outlined in RFP 112-0502.

#### **Optical Transport Equipment**

The planned infrastructure consists of carrier class equipment which includes at a minimum:

- 2.5 Gbps wavelength termination (OC48)
- Time Division Multiplexing
- 1 Gbps Ethernet Interface
- RPR 802.17 support

The backbone configuration and number of nodes will be determined after the award to the above referenced RFP. The Offeror's are required to respond with, but not limited to, pricing for either or both Cisco and Nortel solutions.

#### **Transport Software and Replacement Maintenance**

The Offeror of the transport equipment listed above must list the associated software necessary to the daily operation of the equipment. Advance replacement terms and conditions and costs must also be listed separately.

#### **Other Transport Equipment (Optional)**

The State is interested in having pricing and discount information in regards to other transport equipment that the Offeror wishes to supply. Examples of additional transport equipment are M1/3 multiplexers, optical amplifiers, optical to electrical converters, and coarse wavelength division multiplexers.

### **Class IV - Video Equipment**

STAGENet supports a video infrastructure throughout the State connecting over 380 H.323 video conference rooms. Most of these locations provide education conferencing services for K12 and Higher Education. The State expects to continue expanding to new locations throughout the State as well as introduce the SIP protocol as a possible replacement for H.323. Most end-point Codec systems are Polycom but also include the recent addition of Tandberg systems. The State also owns and operates three Polycom MGC-100 MCUs providing multipoint conferencing services. Classroom scheduling is provided by the North Dakota Interactive Video Network. There are also four stand alone supported video consortiums utilizing MPEG-2 technologies.

#### **Video Hardware**

In response to "Class VI" of this RFP, offerors are required to provide a percentage discount off at least one or any combination of the following video hardware manufactures list price.

- Polycom (Complete Product Line)
- Tandberg (Complete Product Line)

- Sony (To Include Displays, Codec's, and Projectors)
- Sharp (To Include Projectors)
- Epson (To Include Projectors)

Any video hardware not included, as outlined above, in any discount for a specified manufacture must be identified to the State with an explanation of its exclusion. Offers are encouraged to include list pricing and discounts for other manufactures of video hardware and accessories, such as cameras, which would be made available to the State.

### **On-Site Services (Optional)**

The State has needs on occasion to supplement its workforce in the installation or repair of video equipment throughout the State. Therefore, the State seeks offers to provide support services on a "time and material" basis. The State expects that the Offeror would provide on-site support for maintenance issues within the same day but no later than 8:00AM the next business day.

Offerors must provide the labor rate for the various types of employees that provide on-site support.

### **COMPATIBILITY WITH TECHNOLOGY STANDARDS AND EXISTING TECHNOLOGY**

The Offeror must not make substitutions of equipment. No changes that substantially modify or change the equipment selections contracted can be made or implemented without full disclosure to, and approval of the State.

### **3.04**

#### **Product Support and Customer Service Requirements**

##### **Dedicated Contract Representative**

Bidder must provide resumes for dedicated contract representative and the support staff or team. Information for the contract representative and support team must include name, phone number, fax numbers, e-mail address, mailing address and years of appropriate experience. Provide dedicated support or back-up staff names and titles, phone numbers, and fax numbers, as well as e-mail and mailing addresses. Provide the names and titles, phone numbers, fax numbers, and e-mail and mailing addresses for the contract representative's chain of command within your company.

Assigned contract representatives may be required to meet with the State on a regular basis, or when deemed necessary. The State may also require other support staff or team members identified on bidder's escalation lists to be available for these meetings. Please verify that your company can and will make these staff members available to meet with the State, given adequate notice.

##### **Customer Services**

Offerors must describe:

- the process for placing orders for equipment or services,
- the process for handling customer inquiries and response time to inquiries,
- the proposed sales support/account representation and customer relationship services and strategies offered,

- billing procedures
- reporting capabilities and options that provide value to the State,

## **Equipment Support**

Offeror must provide a parts support system capable of providing, timely parts for the duration of the contract proposed. The Offeror must describe their ability to maintain spare equipment, or have an equipment support system (such as SMARTnet) capable of providing, in sufficient quantities to adequately maintain the State's needs. The successful vendor is responsible for any contractors it subcontracts with to provide or deliver any parts or equipment. Firm commitments of supply, documentation, and/or specifications of equipment are required of all equipment and associated hardware.

Describe the support services included with the contract and other support options.  
The Offeror should describe how they would meet the State's need for the following items:

1. (1 to 4 hour) replacement
2. Same day replacement.
3. Next business day replacement.

## **Vendor/Manufacturer Relationship**

The State will make evaluations of the bidder on their relationship with the manufacturers on their partnership agreements (ex. Gold, Silver, Bronze). The State will also examine the term of the current relationship and associated certifications provided by the manufacturer (ex. CCNA, CCDP).

Offerors must describe their relationship with the each equipment manufacturer for all equipment offered in their proposal, including levels of partnership agreements. Furnish copies of certifications and letters from manufacturers to support the current relationship.

## ***VALUE ADDED SERVICES***

Offerors are invited to provide any other service that they feel is relevant to this RFP process.



### **3.05**

#### **Prior Experience**

In order for offers to be considered responsive, Offerors must meet the minimum prior experience requirements. Any Offeror's failure to meet these minimum prior experience requirements will cause its proposal to be considered non-responsive and its proposal will be rejected. The minimum experience requirements are that the Offeror must be a reputable and financially stable company with at least three years of experience in the equipment procurement or maintenance fields. **3.06**

#### **Federal Requirements**

The Offeror must identify all known federal requirements that apply to the proposal, the evaluation, or the contract.

## **SECTION FOUR GENERAL CONTRACT INFORMATION**

### **4.01**

#### **Contract Term, Extension and Renewal Options**

The State intends to enter into a contract with an effective date beginning January 1, 2006. The State intends to award a contract with a term of up to three (3) years for equipment purchases, with three (3) one year contract extensions.

### **4.02**

#### **Contract Type**

This contract is a ***Fixed Price with Adjustment*** contract. Price Adjustments will be negotiated at the request of either party. Prices Adjustments will made by execution of a written amendment to this contract, and the adjustment will be effective when both parties have signed the amendment, unless otherwise specified in the amendment.

The State must be notified in a timely manner of all price decreases. Requests for price increases must include a copy of the manufacturer's official notice or other evidence that the increase is applicable to all customers.

All shipments are to be billed at prices in effect at the time of the order, not the date the shipment is made.

### **4.03**

#### **Sample Terms and Conditions**

Any objections to the contract provisions found in Attachment 2 must be set out in the Offeror's proposal.

### **4.04**

#### **Proposal as a Part of the Contract**

Part or all of this RFP and the successful proposal may be incorporated into the contract.

### **4.05**

#### **Additional Terms and Conditions**

The State reserves the right to add, delete, or modify terms and conditions during contract negotiations. These terms and conditions will be within the scope of the RFP and will not affect the proposal evaluations.

### **4.06**

#### **Supplemental Terms and Conditions**

Proposals including supplemental terms and conditions will be accepted, but supplemental conditions that conflict with those contained in this RFP or that diminish the State's right's under any contract resulting from the RFP will be considered null and void. The State is not responsible for identifying conflicting supplemental terms and conditions before issuing a contract award. After award of contract:

- (a) if conflict arises between a supplemental term or condition included in the proposal and a term or condition of the RFP, the term or condition of the RFP will prevail; and
- (b) if the State's rights would be diminished as a result of application of a supplemental term or condition included in the proposal, the supplemental term or condition will be considered null and void.

#### **4.07**

##### **Contract Approval**

This RFP does not, by itself, obligate the State. The State's obligation will commence when the State signs the contract. Upon written notice to the contractor, the State may set a different starting date for the contract. The State will not be responsible for any work done by the contractor, even work done in good faith, if it occurs prior to the contract start date set by the State.

#### **4.08**

##### **Contract Changes - Unanticipated Amendments**

During the course of this contract, the needs of the State may change with regard to advances in technology that result in improvements to equipment and/or reductions in cost. The benefit of any such improvements must be immediately passed on the State. If an amendment becomes necessary it must be made in writing from the State and approved by the purchasing agency.

#### **4.09**

##### **Indemnification and Insurance Requirements**

Offerors must review Attachment 2 Sample Terms and Conditions for indemnification and insurance requirements. The indemnification and insurance provisions will be incorporated into the final contract.

Objections to any of the provisions of the Indemnification and Insurance Requirements must be made in writing to the attention of the procurement officer by the time and date set for receipt of questions. No alteration of these provisions will be permitted without prior written approval from the State in consultation with the North Dakota Risk Management Division.

Upon receipt of the Notice of Intent to Award, the successful Offeror must obtain the required insurance coverage and provide the procurement officer with proof of coverage prior to contract approval. The coverage must be satisfactory to the State, in consultation with the North Dakota Risk Management Division. The Offeror's failure to provide evidence of insurance coverage is a material breach and grounds for withdrawal of the award or termination of the contract.

#### **4.10**

##### **Taxes and Taxpayer Identification**

The contractor must provide a valid Vendor Tax Identification Number as a provision of the contract.

The State is not responsible for and will not pay local, state, or federal taxes. The State sales tax exemption number is E-2001, and certificates will be furnished upon request by the Information Technology Department (ITD).

A contractor performing any contract, including service contracts, for the United States

Government, State of North Dakota, counties, cities, school districts, park board or any other political subdivisions within North Dakota is not exempt from payment of sales or use tax on material and supplies used or consumed in carrying out contracts. In these cases, the contractor is required to file returns and pay sales and use tax just as required for contracts with private parties. Contact the North Dakota Tax Department at 701-328-2770 or visit its website at [www.ndtaxdepartment.com](http://www.ndtaxdepartment.com) for more information.

A contractor performing any contract, including a service contract, within North Dakota is also subject to the corporation income tax, individual income tax, and withholding tax reporting requirements, whether the contract is performed by a corporation, partnership, or other business entity, or as an employee of the contractor. In the case of employees performing the services in the state, the contractor is required to withhold state income tax from the employees' compensation and remit to the State as required by law.

#### **4.11 Contract Funding**

Approval or continuation of a contract resulting from this solicitation is contingent upon continuing appropriation. The contract may be terminated by the State or modified by agreement of both parties in the event funding from federal, state, or other sources is not obtained and continued at sufficient levels.

#### **4.12 Ordering and Invoicing Procedures.**

Purchase orders will be issued by the Information Technology Department, educational entities, and political subdivisions. Invoices to be submitted to the entity submitting the purchase order. All billings, invoices, and credits must be processed by individual entities before payment is made.

Submission of these items to the Information Technology Department or State Procurement Office will delay payment.

**4.13**  
**Terms of the Sale.** Deliveries are to be F.O.B Destination with freight prepaid and added to the invoice for any North Dakota location. The Contractor owns good in transit. Title for goods ordered under this contract transfers upon delivery to the destination. Vendor shall file any claims with the carrier for breakage or other losses.

**4.14**  
**Delivery.** At the time the order is placed, the Contractor must provide the ordering entity with the date delivery can be expected after receipt of the purchase order. If delivery requirements cannot be met within the specified time, the vendor must notify the ordering entity in writing of the delay and the approximate date delivery may be expected.

The Contractor understands and agrees that all delivery vehicles, delivery personnel, and packages may be subject to security screening at the agency delivery location.

#### **4.15 Payment Terms**

No payment will be made until the State approves the contract.

Payment for commodities and services received under contracts will normally be made within 30 calendar days after receipt and acceptance by the State or after receipt of a correct invoice, whichever is later. Payment inquiries must be directed to the State.

Prompt Payment Discount Terms offered by the contractor may be taken by the State if payment is made within the specified terms.

#### **4.16**

##### **Procurement Card**

Payment may be made by use of a state procurement card. The Contractor shall accept payment by credit card without charging the ordering agency a processing fee.

#### **4.17**

##### **Contract Personnel**

The project manager designated by the State must approve any change of the contractor's project team members named in the proposal, in advance and in writing. Personnel changes that are not approved by the State may be grounds for the State to terminate the contract.

#### **4.18**

##### **Right to Inspect Place of Business**

At reasonable times, the State may inspect those areas of the contractor's place of business that are related to the performance of a contract. If the State makes an inspection, the contractor must provide reasonable assistance.

#### **4.19**

##### **Inspection & Modification - Reimbursement for Unacceptable Deliverables**

The Offeror is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the project manager designated by the State. The State may employ all reasonable means to ensure that the work is progressing and being performed in compliance with the contract. Should the project manager determine that corrections or modifications are necessary in order to accomplish its intent; the project manager may direct the contractor to make changes. The contractor will not unreasonably withhold changes.

Substantial failure of the contractor to perform the contract may cause the State to terminate the contract. In this event, the State may require the contractor to reimburse monies paid (based on the identified portion of unacceptable work received) and may seek associated damages.

#### **4.20**

##### **Termination for Default**

If the project manager designated by the State determines that the contractor has refused to perform the work or has failed to perform the work with diligence as to ensure its timely and accurate completion, the State may, by providing written notice to the contractor, terminate the contractor's right to proceed with part or all of the remaining work.

This clause does not restrict the State's right to termination under the contract provisions of the Service Contract, attached.

#### **4.21**

##### **Open Records Laws - Confidentiality**

Any records that are obtained or generated by the contractor under this contract are subject to North Dakota open records law regarding public records and handling of confidential information.

#### **4.22**

##### **Work Product, Equipment, and Material**

All work product, equipment or materials created or purchased under this contract belong to the State and must be delivered to State at State's request upon termination of this contract, unless otherwise agreed in writing by the State. All delivery of equipment and materials shall be the sole responsibility of the contractor. The contractor shall retain ownership of all contractor-provided materials, supplies, and equipment until the system, or parts thereof, are accepted by the State. The contractor shall at all times be responsible for protecting and securing such materials, supplies, and equipment. Reasonable requests made of the State to enclose or specifically protect such property will be complied with where feasible. If, in the contractor's opinion, the capability of the State to protect the contractor's equipment is insufficient, then the contractor shall make other arrangements to secure them at no additional cost to the State. Regardless of the specific storage arrangements, the risk of loss or damage shall remain solely with the contractor until system acceptance.

#### **4.23**

##### **Independent Entity**

The contractor is an independent entity under this contract and is not a State employee for any purpose. The contractor retains sole and absolute discretion in the manner and means of carrying out the contractor's activities and responsibilities under the contract, except to the extent specified in the contract.

#### **4.24**

##### **Assignment**

Contractor may not assign or otherwise transfer or delegate any right or duty without the State's express written consent. However, the contractor may enter into subcontracts provided that the subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments.

#### **4.25**

##### **Disputes - Applicable Law and Venue**

Any dispute arising out of this agreement will be resolved under the laws of the State of North Dakota. Any action to enforce the contract must be brought in the District Court of Burleigh County, North Dakota.

#### **4.26**

##### **Record Of Sales**

The Contractor must maintain records of sales under the contract and furnish volume of sales information to the State within 10 working days after receiving the request for information. Reports will normally be requested by the State on an annual basis. The report must identify

the name of the ordering entity, a description of the transaction, and the dollar amount of the transaction.

#### **4.27**

##### **Informal Debriefing**

When the contract is completed, an informal debriefing may be performed at the discretion of the procurement officer or project manager designated by the State. If performed, the scope of the debriefing will be limited to the work performed by the contractor. The debriefing time and location will be negotiated between the State and the Offeror.

**SECTION FIVE  
EVALUATION CRITERIA AND CONTRACTOR SELECTION**

**THE TOTAL NUMBER OF POINTS USED  
TO SCORE THIS CONTRACT IS 100**

**5.01**

**Information Technology Solution**

**Fifteen Percent (15%)** of the total possible evaluation points will be assigned to this criterion.

Weight **15 Percent**. Maximum Point Value for this Section

100 Points x **15 Percent = 15 Points**

Rating Scale ( <b>15 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-4</b>	Fair. Limited applicability
<b>5-8</b>	Good. Some applicability
<b>9-12</b>	Very Good. Substantial applicability
<b>13-15</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below.

[a] How well does the proposed product and/or service meets the functional requirements? How wide is the applicable range of equipment offered?

[b] Evaluation of software maintenance options available to the State?

[c] Evaluate the Offeror's response to professional support services. Has the offer proposed services that align with the requirements and demonstrate a good understanding of the scope required for this project?

[d] Has the Offeror offered any value-added functionality, products, services, or upgrades as part of the proposal that demonstrate added value?

[e] How much value does the optional on-site services proposed offer the State?

**5.02**

**Product Support and Customer Service**

**Thirty Percent (30%)** of the total possible evaluation points will be assigned to this criterion.

Weight **30 Percent**. Maximum Point Value for this Section

100 Points x **30 Percent = 30 Points**



Rating Scale ( <b>30 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-7</b>	Fair. Limited applicability
<b>8-14</b>	Good. Some applicability
<b>15-22</b>	Very Good. Substantial applicability
<b>23-30</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below.

[a] How much effort is required by the State to process orders for equipment or services?

[b] Evaluation of the technical support services included with the contract and other technical support options?

[c] How well has the Offeror identified its plan for handling customer inquiries and response time to inquiries?

[d] Evaluation of the proposed sales support/account representation and customer relationship services and strategies offered?

[e] Has the Offeror proposed any billing or reporting options that provide value to the State?

[f] Has the Offeror met the requirements for the timely delivery of material and spares depot?

### 5.03

#### Experience, Qualifications, and Financial Strength

**Fifteen Percent (15%)** of the total possible points will be assigned to this criterion.

Weight **15 Percent**. Maximum Point Value for this Section

100 Points x **15 Percent = 15 Points**

Rating Scale ( <b>15 POINT</b> Maximum)	
Point Value	Explanation
<b>0</b>	None. Not addressed or response of no value
<b>1-4</b>	Fair. Limited applicability
<b>5-8</b>	Good. Some applicability
<b>9-12</b>	Very Good. Substantial applicability
<b>13-15</b>	Excellent. Total applicability

Proposals will be evaluated against the questions set out below.

[a] Do the individuals assigned to the project have experience on similar projects?

[b] Are resumes complete and do they demonstrate backgrounds that would be desirable for individuals engaged in the work the RFP requires?

[c] How extensive is the applicable education and experience of the personnel designated to support the State?

[d] How successful is the general history of the firm regarding timely and successful delivery of the requested services and support?

[e] If references were required, did the references provide information to verify the satisfactory performance of the vendor?

[g] Has the Offeror provided letters of reference from previous clients?

[h] If a subcontractor will perform work on the project, how well does it measure up to the evaluation used for the Offeror?

[i] If company financial statements were required, does the firm appear to be financially stable?

[j] What is the strength of the relationship between the Offeror and the manufacturers they represent, based on the information provided from the Offeror?

#### **5.04**

##### **Contract Cost**

**Forty Percent (40%)** of the total possible evaluation points will be assigned to cost.

##### **Converting Cost to Points**

The State will convert discounts to cost by applying discounts against future purchasing estimates.

After applying any reciprocal preference, the lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be determined as follows:

##### Price of Lowest Cost Proposal

Price of Proposal Being Rated X Total Points for Cost Available = Awarded Points

Any prompt payment discounts terms proposed by the Offeror will not be considered in evaluating cost. The cost amount used for evaluation may be affected by the application of North Dakota preference laws (N.D.C.C. § 44-08-01). The lowest cost proposal will receive the maximum number of points allocated to cost. The point allocations for cost on the other proposals will be evaluated according to the method set forth in the Proposal Evaluation form attached to this RFP.

**5.05****Site Inspection of Offeror's Facility**

The State may conduct on-site visits to the Offeror's firm or Offeror's customer where comparable service is being performed to evaluate the Offeror's capacity to perform the contract. An Offeror must agree, at risk of being found non-responsive and having its proposal rejected, to provide the State reasonable access to relevant portions of its work sites. Individuals designated by the purchasing agency will conduct the site inspection at the State's expense.

## **SECTION SIX PROPOSAL FORMAT AND CONTENT**

### **6.01**

#### **Proposal Format and Content**

The State discourages overly lengthy and costly proposals; however, in order for the State to evaluate proposals fairly and completely, Offerors must follow the format set out in this RFP and provide all information requested. The Offeror's proposal shall include a point by point response for each paragraph in this RFP.

### **6.02**

#### **Introduction**

Proposals must include the complete name and address of Offeror's firm and the name, mailing address, and telephone number of the person the State should contact regarding the proposal.

Proposals must confirm that the Offeror will comply with all provisions in this RFP. The proposal must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota).

Proposals must be signed by a company officer empowered to bind the company. The Offeror's failure to include these items in the proposals may cause the proposal to be determined to be non-responsive and the proposal may be rejected.

### **6.03**

#### **Information Technology Solution**

Offerors must bid on individual classes and manufacturers as specified in section 3.03.

### **6.04**

#### **Product Support and Customer Service**

Offerors must provide a comprehensive response to the product support and customer service requirements specified in Section 3.04. Responses must be in the same sequence as they appear in Section 3.04. Offerors must provide supporting narrative and documentation when required in response to the product support requirements. If answering only a portion of Section 3.03, Offeror must also include procedures and relationships with other providers and a methodology in order to provide support to the State.

### **6.05**

#### **Experience and Qualifications**

In order for offers to be considered responsive, Offerors must meet the minimum prior experience requirements as stated in Section 3.05. Offerors must demonstrate at least three years of experience in the equipment procurement or maintenance fields.

Additionally, Offerors must provide information specific to the personnel assigned to accomplish the work called for in this RFP.

Offerors must provide a narrative description of the organization of the project team and a personnel roster that identifies each person who will actually work on the contract and provide

the following information about each person listed:

- (a) title;
- (b) resume;
- (c) description of the type of work the individual will perform; and
- (d) the number of estimated hours for each individual named above.

If an Offeror intends to use subcontractors, the Offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform. Offerors are responsible for all work performed by their subcontractors.

Offerors must provide three reference names and phone numbers for similar projects the Offeror's firm has completed. The State reserves the right to contact any references provided by the Offeror. Offerors are invited to provide letters of reference from previous clients.

## **6.06**

### **Financial Requirements**

- A.** The Offeror shall provide financial information in such a manner that a determination about the stability and financial strength of the organization can be reasonably formulated. This must include but not be limited to company size, organization, date of incorporation, ownership, number of employees, revenues for the last fiscal year, audited financial statements for the most recent 3 years, and other information which is relevant to this RFP. A current Dun and Bradstreet Report would fulfill this requirement. An Annual Report can be used as verification of financial status provided it contains at a minimum a Compiled Income Statement and Balance Sheet verified by a Certified Public Accounting firm. The State reserves the right to contact the accounting firm if questions arise.
- B.** Disclose any and all judgments, pending or expected litigation, or other real potential financial reversals, which might materially affect the viability or stability of the Offeror's organization; or certify that no such condition is known to exist.
- C.** A confidentiality statement may be included if this portion is considered non-public information. The State may request reports on financial stability from independent financial rating services in order to further substantiate stability.

## **6.07**

### **Cost Proposal**

Offerors must bid on individual classes and manufacturers as specified in section 3.03. An Offeror can bid on any class or combinations of the classes and the State looks favorably on bids including all of the classes.

If educational discounts apply they should be identified and noted as such.

The Offeror will have the option to bid on individual items or as a bundled offering. If a bundled approach is used then any discount should take the form of a percentage discount from the unbundled cost.

Vendor shall file any claims with the carrier for breakage or other losses.

Offerors should describe any discount terms for prompt payment, volume, or other such criteria. Any such discounts will be considered in evaluating cost.

A suggested format for a cost proposal would include the class (from section 3.03), the manufacturer, and the percent discount from the list price. Discounted pricing must include freight charges. The State will not accept invoices with freight charges.

All costs associated with the contract must be stated in U.S. currency. Any commodities being imported must be identified, and the price must include any applicable customs, brokerage agency fees, and duties.

## **6.08**

### **Required Enclosures**

Offerors must provide all documents, samples, or other information specifically required in this RFP.

## **SECTION SEVEN STANDARD PROPOSAL INFORMATION**

### **7.01**

#### **Authorized Signature**

An individual authorized to bind the Offeror to the provisions of the RFP must sign all proposals.

### **7.02**

#### **State Not Responsible for Preparation Costs**

The State will not pay any cost associated with the preparation, submittal, presentation, or evaluation of any proposal.

### **7.03**

#### **Conflict of Interest**

Offerors must disclose any instances where the firm or any individuals working on the contract has a possible conflict of interest and, if so, the nature of that conflict (e.g. employed by the State of North Dakota). The State reserves the right to cancel the award if any interest disclosed from any source could either give the appearance of a conflict or cause speculation as to the objectivity of the Offeror's proposal. The State's determination regarding any questions of conflict of interest is final.

### **7.04**

#### **Offeror's Certification**

By signature on the proposal, the Offeror certifies that it complies with:

- a) the laws of the State of North Dakota;
- b) North Dakota Administrative Code;
- c) all applicable local, state, and federal laws, code, and regulations;
- d) the applicable portion of the Federal Civil Rights Act of 1964;
- e) the Equal Employment Opportunity Act and the regulations issued by the federal government;
- f) the Americans with Disabilities Act of 1990 and the regulations issued by the federal government;
- g) all terms, conditions, and requirements set forth in this RFP;
- h) a condition that the proposal submitted was independently arrived at, without collusion;
- i) a condition that the offer will remain open and valid for the period indicated in this solicitation; and
- j) any condition that the firm and/or any individuals working on the contract do not have a possible conflict of interest (e.g. employed by the State of North Dakota).

If any Offeror fails to comply with the provisions stated in this paragraph, the State reserves the right to reject the proposal, terminate the contract, or consider the contractor in default.

### **7.05**

#### **Offer Held firm**

Proposals must remain open and valid for at least **120 DAYS** from the deadline specified for submission of proposals. In the event award is not made within **120 DAYS**, the State will send

a written request to all Offerors deemed susceptible for award asking Offerors to hold their price firm for a longer specified period of time.

## **7.06**

### **Amendments to Proposals and Withdrawals of Proposals**

Offerors may amend or withdraw proposals prior to the deadline set for receipt of proposals. No amendments will be accepted after the deadline unless they are in response to the State's request. After the deadline, Offerors may make a written request to withdraw proposals and provide evidence that a substantial mistake has been made. The procurement officer may permit withdrawal of the proposal upon verifying that a substantial mistake has been made, and the State may retain the Offeror's bid bond or other bid type of bid security, if one was required.

## **7.07**

### **Subcontractors**

Subcontractors may be used to perform work under this contract. If the Offeror intends to use subcontractors, the Offeror must identify in the proposal the names of the subcontractors and the portions of the work the subcontractors will perform.

If a proposal with subcontractors is selected, the Offeror must provide the following information concerning each prospective subcontractor within **FIVE WORKING DAYS** from the date of the State's request:

- (a) complete name of the subcontractor;
- (b) complete address of the subcontractor;
- (c) type of work the subcontractor will be performing;
- (d) percentage of work the subcontractor will be providing;
- (e) evidence, as set out in the relevant section of this RFP, that the subcontractor is registered and, if applicable, holds a valid North Dakota business license; and
- (f) a written statement, signed by each proposed subcontractor that clearly verifies that the subcontractor is committed to render the services required by the contract.
- (g) a copy of the Offeror/subcontractor contract verifying the Offeror as the sole responsibility for any and all services under this RFP and financially liable, without exception, to the State for all services contracted by the Offeror under this RFP.

The Offeror's failure to provide this information, within the time set, may cause the State to consider its proposal non-responsive and reject it. The substitution of one subcontractor for another may be made only at the discretion and prior written approval of the State's procurement officer or project manager designated by the State.

## **7.08**

### **Joint Ventures**

Joint ventures are acceptable. If submitting a proposal as a joint venture, the Offeror must submit a copy of the joint venture agreement that identifies the principles involved and its rights and responsibilities regarding performance and payment.

## **7.09**

### **Disclosure of Proposal Contents and Compliance with North Dakota Open Records Laws**

All proposals and other material submitted become the property of the State and may be



returned only at the State's option. All proposals and related information, including detailed cost information, are exempt records and will be held in confidence until an award is made, in accordance with N.D.C.C. § 54-44.4-10(2).

Offerors may make a written request that trade secrets and other proprietary data contained in proposals be held confidential. Material considered confidential by the Offeror must be clearly identified, and the Offeror must include a brief statement that sets out the reasons for confidentiality. See the North Dakota Office of the Attorney General website for additional information. <http://www.ag.state.nd.us/OpenRecords/ORM.htm>

After award, proposals will be subject to the North Dakota open records law. Records are closed or confidential only if specifically stated in law. If a request for public information is received, the procurement officer, in consultation with the Office of the Attorney General, will determine whether the information is an exception to the North Dakota open records law, and the information will be processed appropriately.

## **7.10**

### **Evaluation of Proposals**

All proposals will be reviewed to determine if they are responsive to the requirements of this solicitation. An evaluation committee will evaluate responsive proposals. The evaluation will be based solely on the evaluation factors set forth in this RFP. The evaluation will consider information obtained subsequent to any discussions with Offerors determined to be reasonable for award and any demonstrations, oral presentations, or site inspections, if required in this RFP.

## **7.11**

### **Right of Rejection**

The State reserves the right to reject any proposals, in whole or in part. Proposals received from debarred or suspended vendors will be rejected. The procurement officer may reject any proposal that is not responsive to all of the material and substantial terms, conditions, and performance requirements of the RFP.

Offerors may not qualify the proposal nor restrict the rights of the State. If any Offeror does so, the procurement officer may determine the proposal to be a non-responsive counter-offer and the proposal may be rejected.

The procurement officer may waive minor informalities that:

- do not affect responsiveness;
- are merely a matter of form or format;
- do not change the relative standing or otherwise prejudice other offers;
- do not change the meaning or scope of the RFP;
- are insignificant, negligible, or immaterial in nature;
- do not reflect a material change in the work; or
- do not constitute a substantial reservation against a requirement or provision,

The State reserves the right to reject any proposal determined to be non-responsive, and to reject the proposal of any Offeror determined to be non-responsive. The State also reserves the right to refrain from making an award if it determines it to be in its best interest.

## **7.12**

### **Clarification of Offers**

In order to determine if a proposal is reasonably susceptible for award, communications by the procurement officer or the proposal evaluation committee are permitted with any Offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal and determine responsiveness to the RFP requirements. Clarifications may not result in a material or substantive change to the proposal. The initial evaluation may be adjusted because of a clarification under this section.

After receipt of proposals, if there is a need for any substantial clarification or material change in the RFP, an amendment will be issued. The amendment will incorporate the clarification or change, and a new date and time established for new or amended proposals. Evaluations may be adjusted as a result of receiving new or amended proposals.

## **7.13**

### **Discussions and Best and Final Offers**

The State may conduct discussions or request best and final offers with Offerors that have submitted proposals determined to be reasonably susceptible for award. The State is not obligated to do so, therefore, vendors should submit their best terms (cost and technical). The purpose of these discussions is to ensure full understanding of the requirements of the RFP and the Offeror's proposal. Discussions will be limited to specific sections of the RFP or proposal identified by the procurement officer. Discussions, if held, will be after the initial evaluation of proposals by the evaluation committee. If modifications to the proposal are made as a result of these discussions, the modifications must be put in writing.

Offerors with a disability needing accommodation should contact the procurement officer prior to the date set for discussions so that reasonable accommodation can be made.

## **7.14**

### **Preference Laws**

The preference given to a resident North Dakota Offeror will be equal to the preference given or required by the state of the nonresident Offeror. A "resident" North Dakota Offeror, seller, or contractor is one that has maintained a bona fide place of business within this State for at least one year prior to the date on which a contract was awarded. For a listing of state preference laws, visit the following website:

[http://tpps.das.state.or.us/purchasing/pref-law/reciprocal\\_detail.php](http://tpps.das.state.or.us/purchasing/pref-law/reciprocal_detail.php) or contact the North Dakota State Procurement Office at 701-328-2683.

## **7.15**

### **Contract Negotiation**

After final evaluation, the procurement officer may negotiate with the Offeror of the highest-ranked proposal. Negotiations, if held, will be within the scope of the request for proposals and limited to those items that would not have an effect on the ranking of proposals. If the highest-ranked Offeror fails to provide the necessary information for negotiations in a timely manner, or fails to negotiate in good faith, the State may terminate negotiations and negotiate with the Offeror of the next highest-ranked proposal.

If contract negotiations are commenced, they will be held in Bismarck at a date and time to be

determined.

If contract negotiations are held, the Offeror will be responsible for all cost including its travel and per diem expenses.

## **7.16**

### **Failure to Negotiate**

If the selected Offeror:

- fails to provide the information required to begin negotiations in a timely manner;
- fails to negotiate in good faith;
- indicates it cannot perform the contract within the budgeted funds available for the project; or
- if the Offeror and the State, after a good faith effort, cannot come to terms,

The State may terminate negotiations with the Offeror initially selected and commence negotiations with the next highest ranked Offeror.

## **7.17**

### **Notice of Intent to Award - Offeror Notification of Selection**

After the completion of contract negotiation the procurement officer will issue a written Notice of Intent to Award and send copies to all Offerors. The Notice of Intent Award will set out the names and addresses of all Offerors and identify the proposal selected for award. The scores and placement of other Offerors will not be part of the Notice of Intent to Award.

The successful Offeror named in the Notice of Intent to Award is advised not to begin work, purchase materials, or enter into subcontracts relating to the project until both the successful Offeror and the State sign the contract.

## **7.18**

### **Protest and Appeal**

North Dakota law provides that an interested party may protest a solicitation. If an interested party wishes to protest the content of this RFP, the protest must be received, in writing, by the procurement officer at least seven calendar days before the deadline for receipt of proposals.

An interested party may protest the award or proposed award of a contract. If an Offeror wishes to protest the award of a contract or proposed award of a contract, the protest must be received, in writing, by the procurement officer within seven calendar days after the date the Notice of Intent to Award was issued.

## **SECTION EIGHT ATTACHMENTS**

### **8.01 Attachments**

#### **Attachments**

1. Evaluation Summary
2. Sample Terms and Conditions
3. Notice of Intent to Award
4. List of Major Equipment Currently in Use
5. List of Equipment Currently Under SMARTnet Contract

**ATTACHMENT 1  
EVALUATION SUMMARY**

Name of RFP:		
RFP Number		
Vendor Being Evaluated:		
Evaluators Names:		
Date:		
Technical Evaluation (Maximum <b>60 Points</b> )	Maximum Points by Category	Score
1. Information Technology Solution	<b>15</b>	
2. Product Support and Customer Service	<b>30</b>	
3. Experience, Qualifications, and Financial Strength	<b>15</b>	
Cost Evaluation (Maximum <b>40 Points</b> )  1. Make adjustments for reciprocal preference, if necessary. See list of States Preference Laws: <a href="http://www.state.nd.us/csd/spo/resources.html">http://www.state.nd.us/csd/spo/resources.html</a>  2. Calculated points awarded for price.  Price of Lowest Cost Proposal Price of Proposal Being Rated X <b>40 points</b> = Awarded Points		
3. Cost	<b>40</b>	
Total		

## **ATTACHMENT 2**

### **SAMPLE TERMS AND CONDITIONS**

#### **1. TERMINATION FOR CAUSE**

The STATE by written notice of default to the CONTRACTOR may terminate the whole or any part of this contract:

- 1) If the CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by the STATE; or
- 2) If the CONTRACTOR fails to perform any of the other provisions of this contract, or so fails to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of the STATE provided in the above clause related to defaults by the CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

#### **5. FORCE MAJEURE**

CONTRACTOR shall not be held responsible for delay or default caused by fire, riot, acts of God or war if the event is beyond the CONTRACTOR's reasonable control and the CONTRACTOR gives notice to the STATE immediately upon occurrence of the event causing the delay or default or which is reasonably expected to cause a delay or default.

#### **7. MODIFICATION**

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

#### **8. SEVERABILITY**

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms shall not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

#### **9. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without the STATE's express written consent. However, the CONTRACTOR may enter into subcontracts provided that any such subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR shall not have the authority to contract for or incur obligations on behalf of the STATE.

**10. NOTICE**

All notices or other communications required under this contract shall be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ or \_\_\_\_\_  
\_\_\_\_\_

**11. APPLICABLE LAW AND VENUE**

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be brought in the District Court of Burleigh County, North Dakota.

**12. SPOILIATION – NOTICE OF POTENTIAL CLAIMS**

Contractor shall promptly notify state of all potential claims which arise or result from this contract. Contractor shall also take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to the state the opportunity to review and inspect the evidence, including the scene of an accident.

**13. INDEMNIFICATION**

Contractor agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from claims resulting from the performance of the contractor or its agent, including all costs, expenses and attorneys' fees, which may in any manner result from or arise out of this agreement. The legal defense provided by Contractor to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Contractor also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.

**14. INSURANCE**

Contractor shall secure and keep in force during the term of this agreement and Contractor shall require all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Professional errors and omissions, including a three year "tail coverage endorsement," with minimum liability limits of \$1,000,000 per occurrence and in the aggregate.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.
- 3) The State will be defended, indemnified, and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The State of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights and coverages of an additional insured under these policies.
- 5) The insurance required in this agreement, through a policy or endorsement, shall include:
  - a) a "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;
  - b) a provision that the policy and endorsements may not be canceled or modified without thirty days' prior written notice to the undersigned State representative;
  - c) a provision that any attorney who represents the State under this policy must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08;
  - d) a provision that Contractor's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the state and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the Contractor's insurance and shall not contribute with it;
  - e) cross liability/severability of interest for all policies and endorsements;
- 6) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary.
- 7) The Contractor shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.

Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.

## **15. ATTORNEY FEES**

In the event a lawsuit is instituted by the STATE to obtain performance due of any kind under this contract, and the STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay the STATE's reasonable attorney fees and costs in connection with the lawsuit.



**16. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

The STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. The STATE does not waive any right to a jury trial.

**17. CONFIDENTIALITY**

CONTRACTOR agrees not to use or disclose any information it receives from the STATE under this contract that the STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by the STATE. The STATE agrees not to disclose any information it receives from CONTRACTOR that the CONTRACTOR has previously identified as confidential and which the STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

**18. COMPLIANCE WITH PUBLIC RECORDS LAW**

CONTRACTOR understands that, except for disclosures prohibited in Section 17, the STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records which are obtained or generated by the CONTRACTOR under this contract, except for records that are confidential under Section 17, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact the STATE immediately upon receiving a request for information under the open records law and to comply with the STATE's instructions on how to respond to the request.

**19. WORK PRODUCT, EQUIPMENT AND MATERIALS**

All work product, equipment or materials created or purchased under this contract belong to the STATE and must be delivered to STATE at STATE's request upon termination of this contract. CONTRACTOR agrees that all materials prepared under this contract are "works for hire" within the meaning of the copyright laws of the United States and assigns to STATE all rights and interests CONTRACTOR may have in the materials it prepares under this contract, including any right to derivative use of the material. CONTRACTOR shall execute all necessary documents to enable STATE to protect its rights under this section.

**20. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this contract and is not a STATE employee for any purpose, including but not limited to the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workers' Compensation Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out the CONTRACTOR's activities and responsibilities under this contract, except to the extent specified in this contract.

**21. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including but not limited to those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including but not limited to sales and use taxes and unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

**22. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by the North Dakota State Auditor or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

**23. PREPAYMENT**

The STATE will not make any advance payments before performance by the CONTRACTOR under this contract.

**ATTACHMENT 3**  
**NOTICE OF INTENT TO AWARD**  
**STATE OF NORTH DAKOTA**  
**Information Technology Department**  
**600 E Boulevard Ave, Dept 112**  
**Bismarck, ND 58505-0100**  
**Telephone 701-328-1002**  
**Fax 701-328-3000**

**DATE**

**NOTICE OF INTENT TO AWARD**

Request for Proposal (RFP) STAGEnet Transport Services RFP Number 112-0502 was issued by the Information Technology Department of the State of North Dakota in coordination with the Office of Management and Budget on July 8, 2005.

The following vendors submitted proposals in response to the RFP:

***LIST NAMES AND ADDRESSES OF ALL OFFERORS THAT SUBMITTED PROPOSALS OR INCLUDE AS AN ATTACHMENT.***

A committee evaluated the proposals based upon the criteria stated in the RFP to select the Offeror that submitted the most advantageous proposal. We announce our intent to award a contract to ***NAME OF SUCCESSFUL OFFEROR.***

The successful Offeror is instructed not to begin work, purchase materials, or enter into subcontracts relating to the project until both the recipient and the State sign the contract.

An Offeror may protest this Notice of Intent to Award by submitting a written protest to the procurement officer within seven calendar days after the date of this notice.

On behalf of the Information Technology Department, thank you for your efforts in preparing a proposal in response to this solicitation. We appreciate your interest in doing business with the State of North Dakota, and your company will remain our Offerors list for any future solicitations of a similar nature.

If you have any questions, please feel free to contact me at (701) 328-1002.

Sincerely,

Brandy Peterson

Procurement Officer

**ATTACHMENT 4**  
**LIST OF MAJOR EQUIPMENT CURRENTLY IN USE**

<b>Equipment</b>	<b>Quantity</b>
<b>Cisco Routers</b>	
6xx	12
8xx	10
25xx	69
26xx	450
33xx	2
36xx	6
45xx	5
47xx	4
72xx	37
73xx	3
74xx	3
<b>Cisco Switches</b>	
4xx	4
29xx	639
35xx	296
37xx	42
39xx	10
40xx	19
49xx	18
50xx	1
55xx	6
65xx	10
<b>Cisco Firewalls</b>	
Assorted PIX	226
<b>APC UPS</b>	
SU 700	166
SU 1400	533
<b>SU 3000</b>	<b>13</b>
<b>Synoptics</b>	
Hubs	101
<b>Bay Networks Switches</b>	
350T	19
350F	8
810M	10

<b>Equipment</b>	<b>Quantity</b>
<b>Linksys</b>	
VPN router/DSL	226
<b>Polcom</b>	216
<b>iPower</b>	145
<b>Tandberg</b>	10

**ATTACHMENT 5**  
**LIST OF EQUIPMENT CURRENTLY UNDER SMARTNET CONTRACT**

<b>Contractual Response Time: 7x 24 x 4 Hours</b>		
<b>Product</b>	<b>Quantity On Maintenance</b>	<b>\$106K Annually</b>
CISCO7206VXR-CH	1	
7300-1OC12POS-SMI	2	
Cisco7304	2	
L1010-CHAS5=	1	
L1010-SKIT-AC	1	
PA-A3-OC3SMI	2	
PIX-515E-UR-BUN	14	
WS-C6506-1000AC=	1	
WS-C6506-1300AC=	4	
WS-C6509	2	
WS-C6509-1300AC=	1	
<b>Total</b>	<b>31</b>	

<b>Contractual Response Time: 8 x 5 x Next Business Day</b>		
<b>Product</b>	<b>Quantity On Maintenance</b>	<b>\$180K Annually</b>
7206VXR/NPE-G1	2	
CISCO2611XM	2	
CISCO2620	131	
CISCO2621	1	
CISCO2650	41	
CISCO2650XM	16	
CISCO2691	12	
CISCO4500-M	2	
CISCO4700	1	
CISCO7204VXR/225	9	
CISCO7206VXR/NSE-1	6	
CISCO7206VXR-CH	12	
CISCO7401ASR-CP	1	
CVPN3060E-RDBUN-K9	1	
CVPN3060-RED-BUN	1	
L1010-SKIT-AC	1	
PIX-506E-BUN-K9	1	
PIX-515E-UR-BUN	2	
WS-C2948G	18	
WS-C2950-12	2	
WS-C3550-12G	1	
WS-C3550-24-FX-SMI	1	
WS-C4506	1	
WS-C4912G	14	
WS-C4912G=	1	
<b>Total</b>	<b>280</b>	